

RECORDATION NO. 13953-A

FFB 14 1983 - 11 40 AM

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

FFB 14 1983 - 11 40 AM

INTERSTATE COMMERCE COMMISSION

3-0451080

No.

Date.....

Fee \$ 5.00

February 11, 1983

ICC Washington, D. C.

Missouri-Kansas-Texas Railroad Company  
Conditional Sale Financing Dated as of January 15, 1983  
12.875% Conditional Sale Indebtedness Due 1993  
CS&M Ref.: 2044-349

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of Missouri-Kansas-Texas Railroad Company, for filing and recordation, counterparts of the following:

(a) Conditional Sale Agreement dated as of January 15, 1983, between Southwestern States Management Co., and The Missouri-Kansas-Texas Railroad Company; and

(b) Agreement and Assignment dated as of January 15, 1983, between Southwestern States Management Co., and Mercantile-Safe Deposit and Trust Company.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Agent:

Mercantile-Safe Deposit and Trust Company  
P. O. Box 2258  
Baltimore, Maryland 21203

RALPH L. MCAFEE  
HENRY W. DEKOSMIAN  
ALLEN F. MAULSBY  
STEWART R. BROSS, JR.  
HENRY P. RIORDAN  
JOHN R. HUPPER  
SAMUEL C. BUTLER  
WILLIAM J. SCHRENK, JR.  
BENJAMIN F. CRANE  
JOHN F. HUNT  
GEORGE J. GILLESPIE, III  
RICHARD S. SIMMONS  
WAYNE E. CHAPMAN  
THOMAS D. BARR  
MELVIN L. BEDRICK  
GEORGE T. LOWY  
ROBERT ROSENMAN  
JAMES H. DUFFY  
ALAN J. HRUSKA  
JOHN E. YOUNG  
JAMES M. EDWARDS  
DAVID G. ORMSBY  
DAVID L. SCHWARTZ  
RICHARD J. HIEGEL  
CHRISTINE BESHAR  
ROBERT S. RIFKIND

DAVID BOYD  
PAUL M. DODYK  
RICHARD M. ALLEN  
THOMAS R. BROME  
ROBERT D. JOFFE  
ROBERT F. MULLEN  
ALLEN FINKELSON  
RONALD S. ROLFE  
JOSEPH R. SAHID  
PAUL C. SAUNDERS  
MARTIN L. SENZEL  
DOUGLAS D. BROADWATER  
ALAN C. STEPHENSON  
RICHARD L. HOFFMAN  
JOSEPH A. MULLINS  
MAX R. SHULMAN  
WILLIAM P. DICKEY  
STUART W. GOLD  
JOHN W. WHITE  
JOHN E. BEERBOWER  
EVAN R. CHESLER  
PATRICIA GEOGHEGAN  
D. COLLIER KIRKHAM  
MICHAEL L. SCHLER

COUNSEL  
MAURICE T. MOORE  
FRANCIS F. RANDOLPH, JR.

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212 422-3000

TELEX  
RCA 233663  
WUD 125547  
WUI 620976

CABLE ADDRESSES  
CRAVATH, N. Y.  
CRAVATH, LONDON E. C. 2  
2 HONEY LANE, CHEAPSIDE  
LONDON EC2V 8BT, ENGLAND  
TELEPHONE: 1-606-1421  
TELEX: 8814901  
RAPIFAX/INFOTEC:  
1-606-1425

Counterpart  
John Mergenovich  
RECEIVED  
FEB 14 11 25 AM '83  
FEE OPERATION BR.

13963-A  
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INTERSTATE COMMERCE COMMISSION

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[CS&M Ref. 2044-349]

AGREEMENT AND ASSIGNMENT

Dated as of January 15, 1983

Between

SOUTHWESTERN STATES MANAGEMENT CO.

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,  
as Agent.

---

AGREEMENT AND ASSIGNMENT dated as of January 15, 1983, between SOUTHWESTERN STATES MANAGEMENT CO., a Missouri corporation (the "Seller"), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, as agent (together with its successors and assigns, the "Agent") under a Finance Agreement dated as of the date hereof (the "Finance Agreement").

The Seller and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY (the "Railroad") have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") covering the conditional sale and delivery by the Seller and the purchase by the Railroad of the railroad equipment described in Schedule A to the CSA (the "Equipment").

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

SECTION 1. Assignment. The Seller hereby transfers and assigns to the Agent:

(a) all the right, title and interest of the Seller in and to each unit of Equipment when and as severally delivered to and accepted by the Railroad, subject to payment by the Agent to each of the banks named in Section 4 hereof (the "Banks") of the amount required to be paid to each under Section 4 hereof;

(b) all the right, title and interest of the Seller in and to the CSA and in and to any and all amounts which may be or become due or owing by the Railroad to the Seller under the CSA in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA, other than those hereinabove excluded; and

(c) all the Seller's rights, powers, privileges and remedies under the CSA;

without any recourse against the Seller for or on account of the failure of the Railroad to make any of the payments provided for in or otherwise to comply with any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Agent to or transfer or in any way affect or modify the liability of the Seller to deliver

the Equipment in accordance with the CSA. In furtherance of the foregoing assignment and transfer, the Seller hereby authorizes and empowers the Agent, in the Agent's own name or in the name of the Agent's nominee or in the name of and as attorney for the Seller, hereby irrevocably constituted, to demand, sue for, collect and receive any and all sums to which the Agent is or may become entitled under this Assignment and to enforce compliance by the Railroad with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Agent.

SECTION 2. Delivery of Equipment. The Seller agrees that it will deliver the Equipment to the Railroad in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by it. The Seller further agrees that it will warrant to the Agent and the Railroad that at the time of delivery of each unit of the Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances and that it will defend the title to each unit of the Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Seller under the CSA; all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder.

SECTION 3. Indemnification of Agent. The Seller agrees with the Agent that in any suit, proceeding or action brought by the Agent under the CSA for any installment of principal of or interest on the CSA Indebtedness or to enforce any provision of the CSA, the Seller will indemnify, protect and hold harmless the Agent from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Seller of any obligation with respect to the Equipment or the delivery or warranty thereof or arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Seller.

The Seller agrees to indemnify, protect and hold harmless the Agent from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Agent or its assigns because of the use

in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Agent will give prompt notice to the Seller of any such liability or claim actually known to the Agent and will give the Seller the right, at the Seller's expense, to compromise, settle or defend against such claim.

SECTION 4. Conditions of Closing. On the Closing Date fixed as provided in the CSA, the Agent shall pay \$2,610,000\* to First City Bank of Dallas, \$3,100,000\* to Texas Commerce Bank National Association and \$3,456,000\* to Mercantile National Bank at Dallas, in full satisfaction of the indebtedness created under the Prior Sale Agreements (as defined in the CSA) previously assigned to such Banks, the sum of such amounts being equal to the Purchase Price of the Equipment as shown on the invoice therefor then being settled for; provided that there shall have been delivered to the Agent at least five days prior to such Closing Date the following documents, in form and substance satisfactory to it and to its special counsel:

(a) a bill of sale from the Seller to the Agent transferring to the Agent all right, title and interest of the Seller in the units of Equipment, warranting to the Agent that at the time of delivery of such bill of sale the Seller had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than those created by the CSA), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the Closing Date under the CSA;

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\* Subject to reduction in the event of any reduction of the unpaid balance of the unpaid purchase price under the Prior Sale Agreements due to the loss, destruction or damage to any unit of Equipment. The Seller should arrange to pay any accrued interest to the Banks either directly or through the Agent. The Seller should also furnish wire instructions to the Agent for payments to the Banks.

(b) an invoice from the Seller for the units of Equipment containing a representation and warranty by the Seller as to the amounts payable to each of the Banks and that each such amount equals the unpaid purchase price of the Equipment due and payable to such Bank;

(c) a certificate of acceptance with respect to the units of Equipment signed by an officer or agent of the Railroad, stating that such units have been inspected and accepted on behalf of the Railroad, are subject to the CSA and are or will be marked in accordance with Article 6 of the CSA;

(d) an opinion of Cravath, Swaine & Moore, special counsel for the Agent and the Investor (as defined in the Finance Agreement), dated as of such Closing Date, to the effect that:

(i) the Finance Agreement, assuming due authorization, execution and delivery thereof by the Investor, has been duly authorized, executed and delivered and is a legal, valid and binding instrument;

(ii) the CSA has been duly authorized, executed and delivered by the Seller and the Railroad and is a legal, valid and binding instrument, enforceable in accordance with its terms;

(iii) this Assignment has been duly authorized, executed and delivered by the Seller and the Agent and is a legal, valid and binding instrument;

(iv) the Agent is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by the Seller under this Assignment;

(v) the Agent has a valid and perfected first security interest in the units of Equipment for which settlement is being made, and a court should hold that the Agent is entitled to the benefits of 11 U.S.C. § 1168 in the event of the filing of a petition for the reorganization of the Railroad under Title 11 of the United States Code;

(vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the CSA or this Assignment (except for a waiver from the Federal Railroad Administration which has been obtained);

(vii) the CSA and this Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, and no other filing is necessary for the protection of the rights of the Agent in any state of the United States of America or in the District of Columbia;

(viii) registration of the CSA, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933 and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939; and

(ix) the legal opinions referred to in subsections (e), (f) and (g) hereof are satisfactory in form and scope to said special counsel and that said counsel believe that the Agent, the Investor and they are justified in relying thereon;

and as to such other matters as may reasonably be requested by the Agent;

(e) an opinion of counsel for the Railroad, dated as of the Closing Date, to the effect set forth in subsection (d) above (other than clause (ix)) (counsel may assume the due authorization, execution and delivery of documents by parties other than the Railroad and the Seller) and to the effect set forth in clauses (a) and (c) of Paragraph 7 of the Finance Agreement;

(f) an opinion of counsel for the Seller, dated as of the Closing Date, to the effect set forth in clauses (ii), (iii), (iv) and (v) of subsection (d) above (counsel may assume the due authorization, execution and delivery of documents by parties other than the

Seller and the Railroad) and stating that the Seller is a duly organized and validly existing corporation in good standing under the laws of the State of Missouri and has the power and authority to own its properties and to carry on its business as now conducted;

(g) an opinion of Messrs. Mudge Rose Guthrie & Alexander, special counsel to the Railroad, to the effect that (i) to the extent the liens of mortgages on property of the Railroad extend to the Equipment, such liens are subject and subordinate to the security interest of the Agent in and to the Equipment created pursuant to the CSA as transferred and assigned to the Agent pursuant to the Assignment; and (ii) the execution and delivery of the CSA and the fulfillment of the terms and provisions thereof will not conflict with or result in a breach of any of the terms, conditions or provisions of any securities issued by the Railroad to, or any loan or other agreement entered into by the Railroad with, the Federal Financing Bank or the Federal Railroad Administration or any other governmental agency (other than certain provisions of the Guarantee Agreement dated as of June 15, 1977, between the Railroad and the Federal Railroad Administration or the Loan Agreement dated June 27, 1975 between the Railroad and the United States Railway Association, as assigned by said Association to the United States of America acting through the Administrator of the Federal Railroad Administration, the conflict or breach in respect of which has been waived or consented to by the Federal Railroad Administration); it being understood that such counsel may rely on a certificate of the Railroad describing all such mortgage liens, securities and agreements to which the Railroad is a party or by which it is bound.

(h) a certificate or certificates of an officer of the Railroad, dated as of the Closing Date, to the effect that (i) no event of default under the CSA or any event which with notice or lapse of time or both could constitute an event of default shall have occurred and be continuing, (ii) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954) and to the best of his knowledge and belief no other tax liens have been filed and are currently in effect against the Railroad or the Seller, (iii) the Railroad and the Seller have paid all taxes, assessments, and governmental charges and levies affecting their properties except such as



are presently being contested in good faith by appropriate legal proceedings and which, in the opinion of management, have been adequately reserved against, (iv) none of the units of Equipment have, to the actual knowledge of the Railroad, suffered a Casualty Occurrence (as defined in the CSA) except as specified in such certificates and (v) the representations and warranties of the Railroad contained in Paragraph 7 of the Finance Agreement and of the Seller contained herein and in the CSA are true and correct as of such Closing Date with the same effect as if such representations and warranties had been made as of such Closing Date;

(i) certified copies of (a) the bills of sale from the Manufacturer (as defined in the CSA) to each of the Banks under the Prior Sale Agreements and (b) the invoices from the Manufacturer for the units of Equipment;

(j) an acknowledgment and bill of sale executed by each of the Banks acknowledging satisfaction in full of the Prior Sale Agreements and transferring to the Agent all its title and property interest in the units of Equipment; and

(k) such other documents as the Agent may reasonably request.

In giving the opinions specified in subsections (d), (e) and (f) above, counsel may qualify any opinion to the effect that any agreement is enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in subsection (d) above, counsel may rely on the opinions of counsel for the Railroad and the Seller as to title to the Equipment and may rely on the opinions of counsel for the Seller or the Railroad as to any matter governed by the law of any jurisdiction other than New York or the United States of America.

The Agent shall not be required to make payment for the Equipment assigned hereunder on the Closing Date (i) unless it shall have on deposit on the Closing Date pursuant to the terms of the Finance Agreement sufficient funds available thereunder to make such payment, or (ii) if any proceedings specified in Section 14.01(c) or (d) of the

CSA shall have commenced or if an event of default or any event which with notice or lapse of time or both could constitute an event of default shall have occurred and be continuing under the CSA.

In the event that the Agent shall not make any such payment, the Agent shall reassign to the Seller, without recourse to the Agent, all right, title and interest of the Agent in and to the units of Equipment with respect to which payment has not been made by it.

SECTION 5. Assignment by Agent. The Agent may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

SECTION 6. Representations and Agreements of Seller. The Seller hereby represents and warrants to the Agent as follows:

(a) the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration and that, assuming due authorization, execution and delivery thereof by the Railroad, the CSA is a legal, valid and binding agreement, enforceable in accordance with its terms, and that it is now in force without amendment thereto;

(b) each unit of Equipment was new standard-gauge rolling stock when acquired by the Seller from the Manufacturer and was first put into service no earlier than September, 1980; and the aggregate purchase price for the Equipment has been paid in full to the Manufacturer;

(c) it will from time to time and at all times, at the request of the Agent, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts as may be necessary and appropriate to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Agent or intended so to be; and

(d) upon request of the Agent, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Seller therein or in the Equipment.

SECTION 7. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Texas; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 21 of the CSA.

SECTION 8. Headings. Section headings have been provided for convenience only and shall not affect any interpretation of this Assignment.

SECTION 9. Execution. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument. Although this Assignment is dated for convenience as of the date first set forth above, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first set forth above.

SOUTHWESTERN STATES MANAGEMENT  
CO.,

by

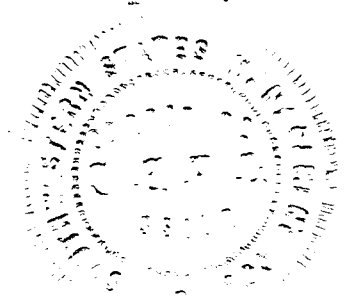
  
Assistant Vice President

[Corporate Seal]

Attest:

  
ASST.

Secretary



MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,

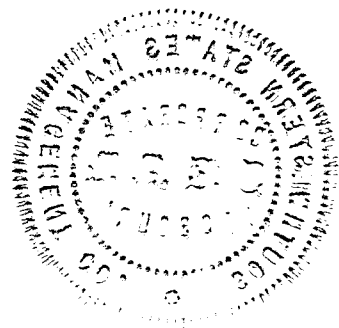
by

[Corporate Seal]

Assistant Vice President

Attest:

Assistant Corporate Trust  
Officer

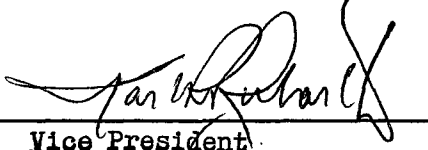


ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of January 15, 1983, and hereby guarantees to the Agent named therein the accuracy of all of the representations and warranties of the Seller, and the due and timely performance by the Seller of all of its obligations, contained in said Agreement and Assignment and in the CSA (as defined therein).

MISSOURI-KANSAS-TEXAS RAILROAD  
COMPANY,

by

  
\_\_\_\_\_  
Vice President

STATE OF TEXAS, )  
 ) ss.:  
COUNTY OF DALLAS,)

On this 10<sup>th</sup> day of February 1983, before me personally appeared H.O. BRANDT, to me personally known, who, being by me duly sworn, says that he is Vice President of SOUTHWESTERN STATES MANAGEMENT CO., a Missouri corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

*Virginia C. Schoeneberger*  
Notary Public

[NOTARIAL SEAL]

My Commission expires 3-24-86

STATE OF MARYLAND, )  
 ) ss.:  
CITY OF BALITMORE,)

On this            day of February 1983, before me personally appeared           , to me personally known, who being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My Commission expires

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[CS&M Ref. 2044-349]

AGREEMENT AND ASSIGNMENT

Dated as of January 15, 1983

Between

SOUTHWESTERN STATES MANAGEMENT CO.

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,  
as Agent.

---

AGREEMENT AND ASSIGNMENT dated as of January 15, 1983, between SOUTHWESTERN STATES MANAGEMENT CO., a Missouri corporation (the "Seller"), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, as agent (together with its successors and assigns, the "Agent") under a Finance Agreement dated as of the date hereof (the "Finance Agreement").

The Seller and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY (the "Railroad") have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") covering the conditional sale and delivery by the Seller and the purchase by the Railroad of the railroad equipment described in Schedule A to the CSA (the "Equipment").

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

SECTION 1. Assignment. The Seller hereby transfers and assigns to the Agent:

(a) all the right, title and interest of the Seller in and to each unit of Equipment when and as severally delivered to and accepted by the Railroad, subject to payment by the Agent to each of the banks named in Section 4 hereof (the "Banks") of the amount required to be paid to each under Section 4 hereof;

(b) all the right, title and interest of the Seller in and to the CSA and in and to any and all amounts which may be or become due or owing by the Railroad to the Seller under the CSA in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA, other than those hereinabove excluded; and

(c) all the Seller's rights, powers, privileges and remedies under the CSA;

without any recourse against the Seller for or on account of the failure of the Railroad to make any of the payments provided for in or otherwise to comply with any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Agent to or transfer or in any way affect or modify the liability of the Seller to deliver



the Equipment in accordance with the CSA. In furtherance of the foregoing assignment and transfer, the Seller hereby authorizes and empowers the Agent, in the Agent's own name or in the name of the Agent's nominee or in the name of and as attorney for the Seller, hereby irrevocably constituted, to demand, sue for, collect and receive any and all sums to which the Agent is or may become entitled under this Assignment and to enforce compliance by the Railroad with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Agent.

SECTION 2. Delivery of Equipment. The Seller agrees that it will deliver the Equipment to the Railroad in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by it. The Seller further agrees that it will warrant to the Agent and the Railroad that at the time of delivery of each unit of the Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances and that it will defend the title to each unit of the Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Seller under the CSA; all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder.

SECTION 3. Indemnification of Agent. The Seller agrees with the Agent that in any suit, proceeding or action brought by the Agent under the CSA for any installment of principal or interest on the CSA Indebtedness or to enforce any provision of the CSA, the Seller will indemnify, protect and hold harmless the Agent from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Seller of any obligation with respect to the Equipment or the delivery or warranty thereof or arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Seller.

The Seller agrees to indemnify, protect and hold harmless the Agent from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Agent or its assigns because of the use

in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Agent will give prompt notice to the Seller of any such liability or claim actually known to the Agent and will give the Seller the right, at the Seller's expense, to compromise, settle or defend against such claim.

SECTION 4. Conditions of Closing. On the Closing Date fixed as provided in the CSA, the Agent shall pay \$2,610,000\* to First City Bank of Dallas, \$3,100,000\* to Texas Commerce Bank National Association and \$3,456,000\* to Mercantile National Bank at Dallas, in full satisfaction of the indebtedness created under the Prior Sale Agreements (as defined in the CSA) previously assigned to such Banks, the sum of such amounts being equal to the Purchase Price of the Equipment as shown on the invoice therefor then being settled for; provided that there shall have been delivered to the Agent at least five days prior to such Closing Date the following documents, in form and substance satisfactory to it and to its special counsel:

(a) a bill of sale from the Seller to the Agent transferring to the Agent all right, title and interest of the Seller in the units of Equipment, warranting to the Agent that at the time of delivery of such bill of sale the Seller had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than those created by the CSA), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the Closing Date under the CSA;

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\* Subject to reduction in the event of any reduction of the unpaid balance of the unpaid purchase price under the Prior Sale Agreements due to the loss, destruction or damage to any unit of Equipment. The Seller should arrange to pay any accrued interest to the Banks either directly or through the Agent. The Seller should also furnish wire instructions to the Agent for payments to the Banks.

(b) an invoice from the Seller for the units of Equipment containing a representation and warranty by the Seller as to the amounts payable to each of the Banks and that each such amount equals the unpaid purchase price of the Equipment due and payable to such Bank;

(c) a certificate of acceptance with respect to the units of Equipment signed by an officer or agent of the Railroad, stating that such units have been inspected and accepted on behalf of the Railroad, are subject to the CSA and are or will be marked in accordance with Article 6 of the CSA;

(d) an opinion of Cravath, Swaine & Moore, special counsel for the Agent and the Investor (as defined in the Finance Agreement), dated as of such Closing Date, to the effect that:

(i) the Finance Agreement, assuming due authorization, execution and delivery thereof by the Investor, has been duly authorized, executed and delivered and is a legal, valid and binding instrument;

(ii) the CSA has been duly authorized, executed and delivered by the Seller and the Railroad and is a legal, valid and binding instrument, enforceable in accordance with its terms;

(iii) this Assignment has been duly authorized, executed and delivered by the Seller and the Agent and is a legal, valid and binding instrument;

(iv) the Agent is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by the Seller under this Assignment;

(v) the Agent has a valid and perfected first security interest in the units of Equipment for which settlement is being made, and a court should hold that the Agent is entitled to the benefits of 11 U.S.C. § 1168 in the event of the filing of a petition for the reorganization of the Railroad under Title 11 of the United States Code;

(vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the CSA or this Assignment (except for a waiver from the Federal Railroad Administration which has been obtained);

(vii) the CSA and this Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, and no other filing is necessary for the protection of the rights of the Agent in any state of the United States of America or in the District of Columbia;

(viii) registration of the CSA, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933 and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939; and

(ix) the legal opinions referred to in subsections (e), (f) and (g) hereof are satisfactory in form and scope to said special counsel and that said counsel believe that the Agent, the Investor and they are justified in relying thereon;

and as to such other matters as may reasonably be requested by the Agent;

(e) an opinion of counsel for the Railroad, dated as of the Closing Date, to the effect set forth in subsection (d) above (other than clause (ix)) (counsel may assume the due authorization, execution and delivery of documents by parties other than the Railroad and the Seller) and to the effect set forth in clauses (a) and (c) of Paragraph 7 of the Finance Agreement;

(f) an opinion of counsel for the Seller, dated as of the Closing Date, to the effect set forth in clauses (ii), (iii), (iv) and (v) of subsection (d) above (counsel may assume the due authorization, execution and delivery of documents by parties other than the

Seller and the Railroad) and stating that the Seller is a duly organized and validly existing corporation in good standing under the laws of the State of Missouri and has the power and authority to own its properties and to carry on its business as now conducted;

(g) an opinion of Messrs. Mudge Rose Guthrie & Alexander, special counsel to the Railroad, to the effect that (i) to the extent the liens of mortgages on property of the Railroad extend to the Equipment, such liens are subject and subordinate to the security interest of the Agent in and to the Equipment created pursuant to the CSA as transferred and assigned to the Agent pursuant to the Assignment; and (ii) the execution and delivery of the CSA and the fulfillment of the terms and provisions thereof will not conflict with or result in a breach of any of the terms, conditions or provisions of any securities issued by the Railroad to, or any loan or other agreement entered into by the Railroad with, the Federal Financing Bank or the Federal Railroad Administration or any other governmental agency (other than certain provisions of the Guarantee Agreement dated as of June 15, 1977, between the Railroad and the Federal Railroad Administration or the Loan Agreement dated June 27, 1975, between the Railroad and the United States Railway Association, as assigned by said Association to the United States of America acting through the Administrator of the Federal Railroad Administration, the conflict or breach in respect of which has been waived or consented to by the Federal Railroad Administration); it being understood that such counsel may rely on a certificate of the Railroad describing all such mortgage liens, securities and agreements to which the Railroad is a party or by which it is bound.

(h) a certificate or certificates of an officer of the Railroad, dated as of the Closing Date, to the effect that (i) no event of default under the CSA or any event which with notice or lapse of time or both could constitute an event of default shall have occurred and be continuing, (ii) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954) and to the best of his knowledge and belief no other tax liens have been filed and are currently in effect against the Railroad or the Seller, (iii) the Railroad and the Seller have paid all taxes, assessments, and governmental charges and levies affecting their properties except such as

are presently being contested in good faith by appropriate legal proceedings and which, in the opinion of management, have been adequately reserved against, (iv) none of the units of Equipment have, to the actual knowledge of the Railroad, suffered a Casualty Occurrence (as defined in the CSA) except as specified in such certificates and (v) the representations and warranties of the Railroad contained in Paragraph 7 of the Finance Agreement and of the Seller contained herein and in the CSA are true and correct as of such Closing Date with the same effect as if such representations and warranties had been made as of such Closing Date;

(i) certified copies of (a) the bills of sale from the Manufacturer (as defined in the CSA) to each of the Banks under the Prior Sale Agreements and (b) the invoices from the Manufacturer for the units of Equipment;

(j) an acknowledgment and bill of sale executed by each of the Banks acknowledging satisfaction in full of the Prior Sale Agreements and transferring to the Agent all its title and property interest in the units of Equipment; and

(k) such other documents as the Agent may reasonably request.

In giving the opinions specified in subsections (d), (e) and (f) above, counsel may qualify any opinion to the effect that any agreement is enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in subsection (d) above, counsel may rely on the opinions of counsel for the Railroad and the Seller as to title to the Equipment and may rely on the opinions of counsel for the Seller or the Railroad as to any matter governed by the law of any jurisdiction other than New York or the United States of America.

The Agent shall not be required to make payment for the Equipment assigned hereunder on the Closing Date (i) unless it shall have on deposit on the Closing Date pursuant to the terms of the Finance Agreement sufficient funds available thereunder to make such payment, or (ii) if any proceedings specified in Section 14.01(c) or (d) of the

CSA shall have commenced or if an event of default or any event which with notice or lapse of time or both could constitute an event of default shall have occurred and be continuing under the CSA.

In the event that the Agent shall not make any such payment, the Agent shall reassign to the Seller, without recourse to the Agent, all right, title and interest of the Agent in and to the units of Equipment with respect to which payment has not been made by it.

SECTION 5. Assignment by Agent. The Agent may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

SECTION 6. Representations and Agreements of Seller. The Seller hereby represents and warrants to the Agent as follows:

(a) the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration and that, assuming due authorization, execution and delivery thereof by the Railroad, the CSA is a legal, valid and binding agreement, enforceable in accordance with its terms, and that it is now in force without amendment thereto;

(b) each unit of Equipment was new standard-gauge rolling stock when acquired by the Seller from the Manufacturer and was first put into service no earlier than September, 1980; and the aggregate purchase price for the Equipment has been paid in full to the Manufacturer;

(c) it will from time to time and at all times, at the request of the Agent, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts as may be necessary and appropriate to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Agent or intended so to be; and

(d) upon request of the Agent, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Seller therein or in the Equipment.

SECTION 7. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Texas; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 21 of the CSA.

SECTION 8. Headings. Section headings have been provided for convenience only and shall not affect any interpretation of this Assignment.

SECTION 9. Execution. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument. Although this Assignment is dated for convenience as of the date first set forth above, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first set forth above.

SOUTHWESTERN STATES MANAGEMENT  
CO.,

by

[Corporate Seal]

\_\_\_\_\_  
Assistant Vice President

Attest:

\_\_\_\_\_  
Secretary



MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,

by

  
Assistant Vice President

[Corporate Seal]

Attest:

  
Assistant Corporate Trust  
Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of January 15, 1983, and hereby guarantees to the Agent named therein the accuracy of all of the representations and warranties of the Seller, and the due and timely performance by the Seller of all of its obligations, contained in said Agreement and Assignment and in the CSA (as defined therein).

MISSOURI-KANSAS-TEXAS RAILROAD  
COMPANY,

by \_\_\_\_\_



STATE OF TEXAS,        )  
                              ) ss.:  
COUNTY OF DALLAS, )

On this                    day of February 1983, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is                    of SOUTHWESTERN STATES MANAGEMENT CO., a Missouri corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[NOTARIAL SEAL]

My Commission expires

STATE OF MARYLAND, )  
 ) ss.:  
CITY OF BALITMORE, )

On this <sup>10th</sup> day of February 1983, before me personally appeared R. E. Schreiber, to me personally known, who being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]

My Commission expires 7-1-86